IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 133 of 2003

in

SPECIAL CIVIL APPLICATION No. 5042 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RASIKLAL TRIBHOVANDAS RAVAL

Appearance:

1. LETTERS PATENT APPEAL No. 133 of 2003

Mr. MA Bukhari, AGP for Appellant.

MR PINAKIN M RAVAL for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: 04/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The short question, which emerges on the surface for our consideration and adjudication in this Letters Patent Appeal under Clause 15 of the Letters Patent, is as to whether the directions, issued while allowing the writ petition, Special Civil Application No. 5042 of 1999 by the learned Single Judge on 11.10.2001, are in any way required to be modified, altered or set aside.

2. The short spectrum of facts may be stated at the outset so as to appreciate the controversy. The respondent is the original-petitioner who questioned the legality and validity of the order dated 5.7.1999 issued by the appellant, inter alia, contending that the recovery of any amount pursuant to the said impugned order in the petition should be restrained placing reliance on the earlier decisions of this Court. The respondent original-petitioner joined the service with effect from 1.1.1960 as Library Attendant in the Education Department. Later on he was appointed as Junior Clerk and thereafter he was appointed as Professional Assistant in the Library Department under the Education Department. Subsequently, he was promoted as Assistant Director of Libraries.

3. Contention of the petitioner has been to the effect that he could be promoted as Assistant Director of Libraries from 1.1.1973 and before the petitioner was promoted as such on 7.8.1984 a provisional seniority list of Librarians and Professional Assistants was published showing their position as on 31.7.1984. He challenged the seniority list contending that he was placed in the lower pay-scale. He therefore made several representations but they remained unsuccessful.

4. The original-petitioner was visited with adverse order on his retirement by the order of respondents finding that earlier pay fixation which was done in 1986 was wrong. According to the contention raised by the original-petitioner the stale controversy has already been settled by judicial adjudication made by this Court.

5. The respondent-authority appeared and resisted the claim and the prayers made by the original-petitioner. The learned Single Judge, upon examination and evaluation of the facts and the proposition of law evolved by this Court earlier, allowed the writ petition and declared that the order dated

5.7.1999 passed by the respondent authority is not sustainable and therefore quashed. It is also further declared that the pay fixation done on 12.11.1986 and subsequent fixation orders are just and proper and the respondents are restrained from making any recovery. The respondents are also directed to extend the benefit of pay-scale of Rs. 550-900 with effect from 1.1.1973. The respondent authorities are directed to the follow the decision of this Court rendered in Special Civil Application No. 2813 of 1986 decided on 12.11.1997 in the case of RF Shaikh vs. State of Gujarat & Another, and the decision rendered in Letters Patent Appeal No. 189 of 1986 on 3rd March 1993.

6. The learned Assistant Government Advocate, Mr. Bukhari, has reiterated the same pleas and contentions advanced before the learned Single Judge. He has submitted that the post of Librarian in College and post of Librarian in District Libraries cannot be equated and there therefore would not arise principle of "equal pay for equal work".

7. We have dispassionately examined the proposition of law propounded by this Court in the aforesaid Letters Patent Appeal and subsequently followed in Special Civil Application No. 2813 of 1986. In the said Letters Patent Appeal, this Court has approved and affirmed the proposition of law laid down by this Court in Special Civil Application No. 878 of 1984 in State vs. Natwarlal Babaldas Patel. This Court has held that the posts of Librarian in a College and the posts of Librarian in District Library are equivalent and are intertransferable and that the duties of both the post-holders are similar and identical. So, the question, which is again agitated before us that these two posts are not identical and therefore principle of "equal pay for equal work" would not apply, would run diametrically to the law propounded by this Court in the aforesaid decision. It is also stated at the Bar that the Division Bench decision in State of Gujarat vs. NB Patel (Supra) was carried further in S.L.P. and it has been dismissed. Therefore, this Court, in Special Civil Application No. 2813 of 1986 in RF Shaikh vs. State of Gujarat & Anr., has rightly upheld that this point or issue is no longer res integra. Obviously, therefore, the said decision is clearly attracted to the facts of the present case and since the issue has been settled, we concur with the said view and we find no justification to interfere with the impugned judgment of the learned Single Judge, in exercise of powers under Clause 15 of the Letters Patent. The Appeal, therefore, deserves to

be summarily dismissed at the admission stage. Accordingly, it shall stand dismissed. The notice shall stand vacated.

8. Consequently, the Civil Application No. 4034 of 2002 is, rejected.

[J.N. Bhatt, J.]

rmr. [K.A. Puj, J.]